

Easement Donation Guidelines

Virginia Outdoors Foundation

These are guidelines to be considered by the Trustees of the Virginia Outdoors Foundation (VOF) in evaluating proposals for the donation of easements. The guidelines are intended to provide direction to the Trustees and to the public but are not to be considered as regulations. Specific circumstances may warrant flexibility and departure from these guidelines as the Trustees consider appropriate.

I. THE CHARACTERISTICS OF THE PROPERTY

The Trustees shall consider the following:

A. Does the easement benefit the public?

- Virginia Code 10.1-1800 establishes that it is in the public interest for VOF to preserve areas of the Commonwealth having natural, scenic, historic, scientific, open-space, or recreational characteristics. Examples of types of properties having these characteristics are described in Attachment A. In determining the public benefit of an easement, the VOF may also refer to the Internal Revenue Code Section 170(h)(4)(A) definitions of the conservation purposes of easements (see Attachment B). **The Trustees shall make a determination that acceptance of the easement brings a public benefit to the Commonwealth.**

B. The conservation values of the property;

- The environmental characteristics of the property, including the existence of wetlands, riparian corridors, wildlife habitat, biological diversity, unique species, historic resources, prime agricultural lands, scenic resources, unique geological features, or critical slopes;
- The geographic location of the property within the Commonwealth, including its proximity to designated statewide resources such as Scenic Rivers, Scenic Highways or Virginia By-ways, state or national parks, wilderness areas, properties listed on the Virginia Landmarks Register, or land under conservation easement;
- The relative importance of the conservation values to be protected by the easement, particularly in the context of the intensity of surrounding development and the role that the property plays in the cultural geography of the area.

C. Population, transportation, and development trends, including;

- Whether the property is identified in a statewide planning document;
- The classification or identification of the property in the local government's Comprehensive Plan, and the current zoning of the property; whether the easement being considered is consistent with and promotes the goals of local land use planning;
- The extent to which the easement is likely to interfere with anticipated public works projects. In considering this factor, the Trustees shall weigh the importance of the property's conservation values against the nature of the anticipated public works project, the extent to which planning for the public works project has been finalized, and the practicality and availability of other options for achieving the purpose of the public works project.

II. THE PROPOSED RESTRICTIONS

The Trustees shall consider the following:

A. The proposed number of parcels permitted on the property. In general, the following density restrictions are encouraged for easements in **rural areas** of the Commonwealth:

- For properties under 100 acres, no subdivision;
- For properties of 100 to 149 acres, one division (two parcels) may be permitted provided that one of the parcels is small and located so as to keep the remainder in a viable farm unit, or, additional restrictions are being placed on the property so as to preserve the conservation values thereon;
- For properties of 150 to 249 acres, two parcels;
- For properties of 250 to 299 acres, two divisions (three parcels) may be permitted provided that one of the parcels is small and located so as to keep the remainder in a viable farm unit, or, additional restrictions are being placed on the property so as to preserve the conservation values thereon;
- For properties of 300 acres and over, average density of at least 100 acres per parcel, i.e. 400+ acres = maximum of four parcels;
- In meeting the above density restrictions, there is no minimum acreage requirement for parcel size. Subdivided parcels may be a cluster of small lots that retain the maximum open space on the remainder in order to maintain a viable size for farm or forestry use.

Note: There is no minimum size for properties considered for easements in either rural areas (A, above) or urban and urbanizing areas (B, below). However, properties of less than 50 acres must contribute to or add to a designated conservation resource i.e. adjacent to an existing park or fronting on a designated scenic river or road, or adjacent to other conservation easements, etc.. In addition, staff must evaluate the property to determine the significance of the resources, the specific restrictions necessary to protect the identified resource (such as no-build area, buffer area, etc.), and whether any development rights are being extinguished by virtue of the proposed easement prior to developing an easement proposal.

B. For easements in **urban or urbanizing areas** of the Commonwealth parcel sizes may vary according to the characteristics of the property. Density restrictions should be evaluated on a case-by-case basis, taking into account the following:

- The acreage of the property to be restricted;
- Average parcel sizes in the surrounding area; and
- The conservation values to be protected and the amount of development which can be sustained without compromising those values.

C. The proposed buildings permitted on the property. In general, the following restrictions are encouraged:

- For each parcel, one principal single-family residence and associated non-residential outbuildings appropriately incidental thereto, including garage, gazebos, tool sheds, etc., and associated structures such as a swimming pool and tennis court are permitted;
- Secondary dwelling units (residential units subordinate to the primary dwelling and situate on the same tract of land including tenant or guest houses, rental cottages, and barn or duplex apartments) are permitted to the extent they are not in conflict with the conservation values of the property. Secondary dwelling units are permitted on a general scale of one per 50 acres; however, the use and character of the land may warrant an increase, or, in some cases, a decrease in these numbers.

Limits on the location, size, and type of secondary dwelling units will factor in the number permitted. In general, the size of secondary dwellings will not exceed 2,500 sq. ft. of enclosed living area.

- For properties of over 50 acres, farm buildings and structures of 4,500 square feet or less in ground area are permitted without review by the Grantee; larger buildings may be permitted with prior written approval of the Grantee. The size threshold at which the review for farm buildings is required may be as large as 10,000 sq. feet on large working farms. For properties smaller than 50 acres farm buildings and structures of 2,500 square feet or less are permitted, larger buildings require prior written approval.

D. Other factors which may affect the applicability of the general guidelines outlined above, including:

- Unusually high visibility or sensitive location of the property which indicates a need for greater restrictions. For properties taken under easement to protect a scenic, natural, or historic resource, building setbacks from that resource (such as a scenic river or road) or "no-build" areas or building siting envelopes may be required. An envelope is the outline of a designated building area.
- Topographic or other intrinsic features of the property which allow for greater density of development without compromising the conservation values of the property.

E. Other Restrictions.

- If a landowner proposes other restrictions than those identified in the standard form easement, the restriction must have a clearly delineated conservation purpose, must be easily observed by VOF during routine monitoring visits, and must be practical to enforce.

III. SPECIAL PROJECT AREAS

The Board of Trustees of the Virginia Outdoors Foundation may designate areas as Special Project Areas. Special Project Areas are particular geographic regions of the Commonwealth where protection through easements is especially warranted, and where the Foundation expects to concentrate resources. The following factors may aid in designating Special Project Areas:

A. The area is of statewide natural, scenic, historic, scientific, open-space, or recreational significance. One or more of the following documents may help identify such significance:

- Critical Environmental Areas Survey
- The Virginia Outdoors Plan
- The locality's Comprehensive Land Use Plan
- Chesapeake Bay Preservation Areas Study
- Division of Natural Heritage database
- Other statewide planning documents

B. Support from local landowners has been identified.

C. A local land trust, conservation group, or other organization has expressed an interest in working with the VOF to encourage protection of the area.

D. The local government has indicated an interest in protection of the area through easements.

IV. TERMS OF APPROVAL

Approval of an easement by the VOF Trustees authorizes execution of the easement at any time within two years following the date of approval. If an approved easement has not been executed and recorded within that time it must be resubmitted to the Trustees for approval.

ATTACHMENT A:

Guidelines for VOF Staff to Use in Evaluating Potential Easement Properties

Criteria or guidelines for determining:

NATURAL (meets one of the following):

- A.) the property is in a relatively **natural state** defined by areas:
- with little or no land disturbance or clearing of vegetation, or
 - providing habitat for rare, threatened, or endangered species, or
 - of high biological diversity as determined by qualified professional, or
 - designated as wilderness area, or
 - having unique geological features, or
- B.) The property includes lands designated by a federal, state, or local government, or recognized organization as:
- wetlands
 - wildlife habitat
 - riparian corridors, public water supply watersheds, Chesapeake Bay Resource Protection Areas, Resource Management Areas, flood plain protection areas, or other lands important to water quality or quantity
 - steep or critical slopes
 - prime or locally important agricultural or forestal soils.

SCENIC (meets one of the following):

- A.) The property is listed in a state, or regional, or local landscape inventory (including site-specific listing in the local Comprehensive Plan),
- B.) The property is visually accessible from a park, nature preserve, road, recreational waterbody, trail, or historic structure or land area, open to, or used by, the general public and possesses scenic characteristics (examples of factors used in defining a particular view as "scenic" include, 1.) the compatibility of the land use with other land in the vicinity; 2.) the degree of contrast and variety provided by the visual scene; 3.) the openness of the land; and 4.) the harmonious variety of shapes and textures.)

HISTORIC (meets one of the following):

A.) The property is an historically important land area:

- an independently significant land area (for example an archaeological site or a battlefield) that is listed or meets the criteria for listing on the State or National Register, or
- listed on the State or National Register or within a Rural Historic District, or
- identified by the County Comprehensive Plan as having local historic significance, or
- identified and documented by a recognized organization as having local historical significance.

B.) The property includes an historic structure and/or its setting:

- any building, structure, or land area that is listed or meets the criteria for listing on the State or National Register, or
- a supporting structure located within a registered Historic District, or
- a structure identified by the County Comprehensive Plan as having historical significance, or
- identified and documented as having local historic significance (including an example of an architectural style, an association with an historical event, or an association with an historical figure).

Note: In the case of a property that has a State or National Register site on it, VOF recommends that the landowner consider donating an historic preservation easement to the Va. Department of Historic Resources.

SCIENTIFIC:

A.) The property includes a site used for scientific research or determined to be appropriate for the systemic and objective collection of data under the direction of a qualified individual in the field of natural science, for example a colony of trees resistant to a wide-spread virus, or a unique karst cave system.

OPEN-SPACE:

A.) The preservation of the property is pursuant to a clearly delineated governmental policy, for example farmland within an Agricultural and Forestal District, or forestland within a Mountainside Overlay or Conservation District. Please refer also to note on minimum acreage.

RECREATIONAL:

A.) The property is regularly accessible for use and enjoyment by the general public and contains resources of educational value or offers recreational opportunities, for example a water area used by the public for boating or fishing, or a nature or hiking trail open to the public.

ATTACHMENT B:

Internal Revenue Code Section 170(h)(4)(A) defines conservation purposes as:

- i) the preservation of land areas for outdoor recreation by, or the education of, the general public,
- ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
- iii) the preservation of certain open space (including farmland and forest land) where such preservation is ----
 - (I) for the scenic enjoyment of the general public and will yield a significant public benefit, or
 - (II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy and will yield a significant public benefit.
- (iv) the preservation of an historically important land area or a certified historic structure.

*Note: The Virginia Outdoors Foundation cannot guarantee that an easement will qualify for a federal income tax deduction under IRS criteria. Donors should consult with qualified tax advisors to determine the tax effect in their particular situation. VOF is not involved in determining the value of an easement for tax purposes. This determination must be made by a qualified independent appraiser.